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*Confirming Articles of Agreement for Inclosing
Common or Waste Ground within the Manor
or Lordship of Hestington, in the County of
York.*



Whereas an Agreement was lately made and entered into under the Hands and Seals of the Reverend *Henry Yarborough*, Doctor in Divinity, Prebendary of the Prebend of *Ampleford*, founded in the Cathedral and Metropolitcal Church of *Saint Peter of York*, *Nathaniel Cholmley* Esquire, *Henry Wickham* Clerk, *Charles Yarborough* Esquire, and divers other Persons, Owners of Lands, Tenements, and Hereditaments, within the Manor or Lordship of *Hestington*, in the County of *York*, in the Words, or to the Effect, following; That is to say, Articles of Agreement, indented, made, concluded, and agreed upon, this Twentieth Day of *November*, in the First Year of the Reign of our Sovereign Lord *George the Third*, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth, and in the Year of our Lord One thousand Seven hundred and Sixty, between the Reverend *Henry Yarborough*, Doctor in Divinity, Prebendary of the Prebend of *Ampleford*, founded in the Cathedral and Metropolitcal Church of *Saint Peter of York*, *Nathaniel Cholmley*, of *Howsham*, in the County of *York*, Esquire (eldest Son and Heir of *Hugh Cholmley*, late of *Howsham* aforesaid, Esquire, deceased), and the Reverend *Henry Wickham*, of *Guisley*, in the said County of *York*, Clerk, of the one Part; and *Charles Yarburch*, of *Hestington*, in the said County of *York*, Esquire, *William Uppelby*, of *Hestington*, in the said County,

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Gentleman,

Gentleman, *Robert Oates*, of *Waterfuford*, in the faid County, Efquire, *William Agar*, of *Langwith*, in the faid County, Gentleman, *Thomas Cuffons*, of *Heflington* aforefaid, Gentleman, and the feveral other Perfons whofe Names and Seals are hereunto fubfcribed and fet, of the other Part : ~~Whereas~~ the Copyhold Manor or Lordfhip of *Heflington*, in the faid County of *York*, Part of the Prebend of ~~Ampleford~~ aforefaid, and all the Demefnes, Lands, Tenements, Tythes, and other Hereditaments thereunto belonging, were demifed by the faid *Henry Yarbrough*, Prebendary of the faid Prebend, by Indenture Tripartite, bearing Date the Thirtieth Day of *November*, in the Twenty-fifth Year of the Reign of his late Majefty King *George* the Second, to the faid *Hugh Cholmley*, fince deceased, and his Heirs and Affigns, for the natural Lives of *Elizabeth Wickbam* Spinfter, one of the Daughters of *Henry Wickbam*, late of the City of *York*, Efquire, deceased, the faid *Henry Wickbam*, Party to thefe Presents, and *Mary Wickbam* Spinfter, Daughter of the fame *Henry Wickbam*, and the Life of the longeft Liver of them, under the Rents and Covenants therein mentioned and expreffed : And whereas the Name of the faid *Hugh Cholmley* was only made ufe of in the faid Leafe in Truft for the faid *Henry Wickbam*, Party to thefe Presents, and his Heirs and Affigns, he the fame *Henry Wickbam* having then and now the beneficial Interelt in the faid Manor, and all the faid demifed Premifes, and being in the actual Poffeffion and Receipt of the Rents and Profits thereof : And whereas the faid *Hugh Cholmley* is fince deceased, and the legal Eftate of the faid demifed Premifes is defcended upon the faid *Natbaniel Cholmley*, his eldeft Son and Heir, in Truft for the fame *Henry Wickbam*, his Heirs and Affigns : And whereas within the faid Copyhold Manor or Lordfhip of *Heflington* aforefaid there is a large Parcel of Common or Wafte Ground, containing by Eftimation Eight hundred and Fifty Acres of Land, or thereabouts, the Soil whereof belongs to the fame *Henry Wickbam*, as Part and Parcel of the faid Prebendal Manor, and the Depafturage whereof belongs to the Owners of antient Mefluages, Cottages, and Frontsteads, within the fame Manor or Lordfhip, as well thofe belonging to the fame *Henry Wickbam*, as Parcel of the Demefnes of the fame Manor, fo demifed to him as aforefaid, as thofe held of the fame Manor by Copy of Court-roll, exclusive of all others, in fuch Proportion that the Common Right belonging to fuch Mefuage or Mefuageftead is double to that belonging to each Cottage or Cottageftead : And whereas the faid *Henry Wickbam*, Party to thefe Presents, is alfo intituled, by virtue of the faid recited Leafe, to all the Tythes and Tenths arifing, renewing, and payable, out of all the Lands and Tenements within the faid Copyhold Manor : And whereas the fame *Henry Wickbam* hath lately caufed Part of the faid Common, containing Thirty Acres by Eftimation, or thereabouts, to be inclofed and cultivated, and he and all the other Parties to thefe Presents are willing and defirous that the Refidue of the faid Common fhall be divided and allotted amongst them, for their mutual Advantage and Convenience, according to their feveral Rights and Interelt therein, and that the Part fo already inclofed by the fame *Henry Wickbam* fhall be allotted to him for or in Part of the Share of the faid Common, which will appear to belong to him upon, fuch general Inclofure ; It is therefore mutually covenanted, concluded, and agreed upon by and amongst all the faid Parties to thefe Presents, for themfelves and their refpective Heirs, Succelfors, and Affigns refpectively, that an Act of Parliament fhould be applied for and endeavoured to be obtained, as foon as may be, whereby it may be Enacted, That *William Smith*, of the City of *York*, Gentleman, *Natban Hoyle*, of *Guifeley* aforefaid, Gentleman, and *John Dickenfion*, of *Beverly*, in the faid County of *York*, Gentleman, fhall be Commiffioners for the fetting out, dividing, and allotting, the faid Common, and for the executing the feveral other Powers herein after mentioned ; and for that Purpofe the faid Commiffioners, or the major Part of them, fhall and may, within Twelve Months next enfuing, caufe a true and perfect Survey and Admeafurement to be made of the faid Common, by fuch Perfon or Perfons as they, or the major Part of them, fhall think fit : And after fuch Survey and Admeafurement fo made, fhall fet out, divide, apportion, and allot the fame, to and amongst the

the same *Henry Wickbam*, as Owner of the antient Messuages, Cottages, and Frontsteads, Parcel of the Demesnes of the said Manor, and all the Owners of antient Copyhold Messuages, Cottages, and Frontsteads, within the said Manor or Lordship, having Common Right upon the said Common, in such manner as that the Share of the Owner or Owners of each Messuage or Messuagestead may be double in Value, Quantity and Quality considered, to the Share of the Owner or Owners of each Cottage or Cottagestead, in lieu of their respective Common Rights in the said Common; in which Allotments no Regard shall be had to the Estate in Land of any such Owner, nor to the Magnitude nor Goodness of any House: *Provided* always, That the Part of the said Common so already inclosed by the said *Henry Wickbam*, Party to these Presents, shall be allotted and confirmed to him by the said Commissioners, for or in Part of the Share of the said Common, which shall be adjudged by the said Commissioners, or the major Part of them, to belong to him, as Owner, under the said Lease, of such antient Messuages, Cottages, or Frontsteads, as aforesaid: *Provided* also, That no undue Preference be given to any of the Parties interested in the said intended Division and Allotments; but that the same shall be fairly and impartially made, as well with respect to the Quantity and Quality of the Shares so to be allotted, as to the Convenience and Advantage of all the Parties interested therein; and so as each Person's Allotment may lie as commodiously for his antient Inclosures as may be: *And* it is hereby further agreed, That after such Division and Allotments shall be made as aforesaid, One Year's full improved Rent, and no more, shall, for ever after the making the said Allotments, be paid to and accepted by the same *Henry Wickbam*, his Heirs and Assigns, and the future Lessee or Lessees of the said Manor or Lordship for the Time being, as and for the Fine for such Allotments respectively, upon the Death or Alienation of the respective Owners thereof from time to time; and that, for and during the First Four Years after the said Common shall be divided and allotted as aforesaid, no Tythes or Tenths, or Ecclesiastical Dues whatsoever, shall be due or payable to the same *Henry Wickbam*, his Heirs or Assigns, or any other Person or Persons, for or in respect of such Allotments, or any of them; but that, after the Expiration of Four Years, to be computed from the Time of making the Award herein after mentioned, all such Allotments shall be liable to the Payment of Tythes in Kind to the same *Henry Wickbam*, his Heirs or Assigns, or to the Person or Persons who shall for the Time being be intitled to such Tythes: *And* it is hereby further agreed, That in case any Dispute or Controversy shall arise, touching or concerning any Person's Right or Interest in the said Common, the same shall be determined by the said Commissioners, or the major Part of them, after hearing and examining the Allegations and Proofs of all Parties concerned therein, and being assisted also by Council learned in the Law, if they shall think fit, and such Determination of the said Commissioners, or the major Part of them, shall be final and conclusive, as to all such disputed Claims; and also that the said Commissioners, or the major Part of them, shall have Power to set out all such publick and private Ways and Roads, Ditches, Fences, Drains, Bridges, Gates, and Stiles, as they shall think necessary and convenient, in, over, and upon, the Lands so to be divided and allotted as aforesaid; so as all such publick Highways, so to be set out, be of the Breadth of Forty Feet at the least, between and exclusive of the Ditches; and to order and appoint by whom and in what manner all the said Ways and Roads, Ditches, Fences, Drains, Bridges, Gates, and Stiles, shall respectively be made, and thereafter, from time to time, repaired, maintained, and kept in Repair; and also to divide and alter the Course of any of the Springs, Streams, or Currents of Water, within any Part of the said Common, for the conveying of Water to and for the Benefit of the several Allotments so to be made: *Provided*, That all such publick and common Highways, when so set out and made as aforesaid, shall, from time to time, be repaired and kept in Repair by such Person and Persons as the said Commissioners, or the major Part of them, shall direct; and that after such Ways and Roads shall be so set out and made, it shall not be lawful for any Person or Persons, in any manner whatsoever, to use

use any other publick or private Way or Road, in or over the said Lands, so to be divided and allotted, or any of them, nor to turn any Sheep into any Lanes, Ways, or Passages, on either Side whereof any new Fences shall be made, for the Space of Seven Years after making the Award herein after mentioned: **And**, for the preventing any Disputes or Differences relating to the said intended Division and Inclosure, It is hereby further agreed, That the said Commissioners, or the major Part of them, shall, on or before the First Day of *January*, which will be in the Year of our Lord One thousand Seven hundred and Sixty-three, make or cause to be made an Award or Instrument in Writing, in which they shall express the Quantity and Contents, in Statute Measure, of the said Common, so intended to be divided and inclosed as aforesaid, and the Quantity and Contents, Situation, Buttals, and Boundaries, of each and every Parcel thereof, which shall be allotted to the said respective Proprietors, upon such Partition and Division as aforesaid; and shall also express and ascertain the respective yearly Values of the several Allotments, so to be made to the Copyhold Tenants of the said Manor; and shall contain proper Orders and Directions concerning such publick and private Roads and Ways, and concerning the Fences, Ditches, Drains, Bridges, Gates, and Stiles, in, over, and upon, the said Lands, so intended to be divided and inclosed as aforesaid, together with all such other Orders and Directions, as they the said Commissioners, or the major Part of them, shall think necessary or proper for the perfecting and completing the said intended Division and Inclosure; and such Award or Instrument shall be fairly ingrossed upon Parchment, and sealed and delivered by the said Commissioners, or the major Part of them, and then inrolled at length in the publick Register Office for registering Deeds in the East Riding of the said County of *York*: **And** it is hereby further agreed, That immediately after such Division and Allotments of the said Common shall be made, and such Award or Instrument shall be executed as aforesaid, all Right of Common or Stray, in or upon the the Lands which shall then be so divided and allotted, shall absolutely cease and be extinguished: **And** it is hereby further agreed, That all and every Person and Persons, to whom any Share or Shares of the said Common shall be allotted as aforesaid, or their respective Heirs or Assigns, shall, within Six Calendar Months after the Execution of the said Award, and publick Notice given for that Purpose, in the Parish Church of *Heslington* aforesaid, on a *Sunday*, immediately after Divine Service (which Notice the said Commissioners, or the major Part of them, shall cause to be so given), accept their several and respective Allotments so to be made; and in case any Person or Persons shall neglect or refuse to accept his, her, or their, said Allotment or Allotments, within the Time aforesaid, such Person or Persons, so neglecting or refusing, and his, her, or their Heirs and Assigns, shall be totally excluded from having or receiving any Benefit or Advantage by the said intended Division and Inclosure (save upon the Terms herein after expressed), and shall also be excluded from any Estate, Interest, or Right of Common, in any of the Lands to be allotted to any other Person or Persons: **Provided** nevertheless, That Executors in Trust, Guardians, Husbands, Trustees, or Attornies, of any Person or Persons, being Minors, under Coverture, or beyond the Seas, or otherwise incapable by Law to accept their said Allotments, so to be made as aforesaid, shall and may accept thereof for the Use of such Person or Persons, so incapacitated as aforesaid, and such Acceptance shall be as valid and effectual, as if the Person or Persons, for whom the same shall be made respectively, was or were capable of acting for themselves; any thing herein contained to the contrary notwithstanding: **Provided** also, That the Non-claim or Non-acceptance of any Guardian, Husband, Committee, Trustee, or Attorney, shall not exclude or prejudice the Claim or Acceptance of any Person under such Disability or Incapacity as aforesaid, who shall claim or accept within One Year after such Disability or Incapacity removed, or of any Person or Persons intitled as Heir or in Remainder, after the Death of any Person dying under such Disability or Incapacity, who shall claim or accept within One Year after his, her, or their Right, Title, or Interest, shall have descended, vested, or accrued: **Provided** also, That nothing

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herein contained, shall extend or be construed to revoke, alter, or annul, any Deed, Will, Settlement, or Lease, to prejudice any Person having or claiming any Right, Interest, or Charge whatsoever, in, to, or upon, or any-ways affecting, any of the Lands so to be divided and inclosed as aforesaid; but that the several Lands and Grounds so to be allotted shall, immediately after such Allotments and Award so made, be, remain, and enure, and be held and enjoyed, and the several Persons to whom the same shall be respectively allotted shall from thenceforth stand and be seised thereof, to and for such and the same Uses and Estates, and subject to the same Limitations, Trusts, Rents, Charges, and Incumbrances of every Kind, as the Messuages and Cottages in respect whereof each such Allotment shall be made, shall, at the Time of the making such Award, be subject and liable to, charged with, and affected by: And it is hereby further agreed, That when the Lands, so to be divided and allotted as aforesaid, shall be set out and ascertained by such Award or Instrument as aforesaid, the several Persons to whom the same shall be so set out and allotted respectively, or their respective Heirs or Assigns, shall, at their own Expence respectively, inclose, hedge, ditch, and fence, each their own several and respective Allotments, within such Time, and in such Manner, as the said Commissioners, or the major Part of them, shall direct or appoint: And it is hereby further agreed, That the Costs, Charges, and Expences, in and about the making and executing these Presents, and in and about the soliciting and obtaining such Act, and the making such Survey and Admeasurement as aforesaid, and all the Charges and Expences of the said Commissioners, in and about the making their said Award, and the Charges of inrolling the same as aforesaid, and other incidental Charges and Expences whatsoever, for or by reason of the said intended Division and Allotments, and the carrying such Act, when passed, into Execution, shall be jointly borne and paid by the respective Owners of, and Persons interested in, the said Common, according to an equal Pound-rate, to be settled by the said Commissioners, or the major Part of them, and to be charged upon the Allotments according to the respective Values thereof: And in case any Person or Persons shall refuse or neglect to pay his, her, or their, Share or Shares, of such Charges and Expences, to such Person or Persons, and within such Time, as the said Commissioners, or the major Part of them, shall appoint, then the said Commissioners, or the major Part of them, may, by Warrant under their Hands and Seals, cause the same to be levied by Distress and Sale of the Goods and Chattels (wheresoever the same shall be found), of the Person or Persons respectively refusing or neglecting to pay the same, rendering the Overplus, if any, upon Demand, to the Owner or Owners of such Goods and Chattels, the reasonable Charges attending such Distress and Sale being first deducted and paid: ~~Provided~~ nevertheless, That if any Person or Persons, to whom any Share or Shares of the said Common shall be allotted as aforesaid, shall be intitled only to a Life Estate therein, or to any Estate for Years, determinable within the Compass of a Life or Lives, then the Proportion of such Costs and Charges aforesaid, which shall be charged upon such Share or Shares of the said Common, shall be divided between such Tenants for Life or Years, and those intitled to the Reversion or Remainder of such Share or Shares, in such manner as the said Commissioners, or the major Part of them, shall deem to be just and reasonable, to be levied and recovered as aforesaid, by Distress and Sale of the Goods of the respective Parties so to be charged therewith: And it is hereby further agreed, That in case any Person or Persons shall neglect or refuse to accept his, her, or their, Allotment or Allotments within the Times and according to the Provisions herein before limited and provided, or shall neglect or refuse to inclose the same, or to pay his, her, or their Proportion or Proportions of such Costs, Charges, and Expences, within such Time as shall be appointed by the said Commissioners, or the major Part of them, for that Purpose, it shall and may be lawful to and for the said Commissioners, or the major Part of them, if they shall think fit, to cause such Allotment and Allotments respectively, or any of them, to be inclosed, hedged, fenced, and ditched, as they shall think proper, and

to borrow and take up at Interest (so as such Interest do not exceed Four Pounds Ten Shillings for every One hundred Pounds by the Year), such Sum and Sums of Money as shall be necessary and sufficient to defray the Expences of inclosing, fencing, and ditching the same, and also such Proportion or Proportions of any other the Charges and Expences aforesaid, as shall be charged upon the same Allotment or Allotments as aforesaid; and for securing the Repayment thereof, with such Interest as aforesaid, the said Commissioners, or the major Part of them, shall and may, by Indenture or Indentures under their Hands and Seals, from time to time, grant and convey to any Person or Persons, who shall be willing to lend such Money, any Lands and Grounds which shall have been so allotted to the Person or Persons so neglecting or refusing as aforesaid, for any Term or Number of Years, redeemable upon Payment of the Money so to be advanced, with such Interest as aforesaid; and the Money so to be raised shall be applied, in the First place, for and towards the defraying the same Proportion or Proportions of such Charges and Expences, and the Residue, if any, shall go towards defraying the Expences of inclosing, fencing, and ditching, the same Allotment or Allotments: And it is hereby further agreed, That the Person and Persons, so neglecting or refusing to accept or inclose his, her, or their, Allotment or Allotments as aforesaid, his, her, or their Heirs, Executors, Administrators, and Assigns respectively, or any Person or Persons intitled, or to be intitled, in Reversion or Remainder, thereto, shall not have any Right of Redemption, Entry, or Claim whatsoever, of, in, or to, the same Allotment or Allotments, or to the Rents and Profits thereof, or of any Part thereof, till all such Mortgage Money and Interest, and also all that shall be due for his, her, or their Proportion or Proportions of such Costs, Charges, and Expences, and the Charges of seacing and inclosing the same Allotment or Allotments respectively, shall be by him, her, or them, fully paid and satisfied, together with the Costs and Charges of each such Mortgage and Demise, any thing herein contained to the contrary notwithstanding: And it is hereby further agreed, That before any Meeting of the said Commissioners, for any of the Purposes aforesaid, Notice in Writing, under their Hands, or the Hands of the major Part of them, shall be given or published on some Sunday, in the Parish Church of *Heslington* aforesaid, immediately after Divine Service, of the Time and Place when and where the said Commissioners intend first to meet for the Purposes aforesaid (which Notice shall be given Ten Days at the least before such Meeting), and such Commissioners, on the major Part of them, being so met according to such Notice, they, or the major Part of them, shall and may afterwards meet at such Times and Places as they shall think fit, and with or without any Adjournment, for the Purposes aforesaid: And also that if any One or more of the said Commissioners shall happen to die or refuse to act, before Award shall be made and perfected as aforesaid, then the surviving or acting Commissioner or Commissioners shall and may, within Two Months after the Death or Refusal of each such Commissioner as aforesaid, elect some other proper Person or Persons, not interested in the Premises, to be a Commissioner or Commissioners in the Room of him or them so dying or refusing to act; and the Person or Persons, so to be elected, shall have the same Powers and Authority in the Premises, as the Commissioner or Commissioners in whose Room he or they shall succeed; and in the mean time, or in Default of such Election, the surviving or acting Commissioner or Commissioners shall proceed in such intended Division and Allotments, and in executing all the other Powers herein before contained: **Provided** always, That nothing herein contained shall be construed to defeat, lessen, or prejudice the Right, Title, or Interest, of the said *Henry Wickham*, Party to these Presents, his Heirs or Assigns, or any Owner or Lessee of the said Copyhold Manor of *Heslington* aforesaid, with respect to the Seignory and Royalties incident or belonging to the same Manor, but that he and they shall and may, from time to time, and at all times for ever hereafter, according to his and their Estate and Interest, hold and enjoy all Rents, Fines, Services, Courts, Perquisites and Profits of Courts, and other Royalties and

and Seignories, to the same Manor belonging or appertaining, in as full, ample, and beneficial manner, to all Intents and Purposes, as he the same *Henry Wickham* now holds and enjoys the same (other than and except such Right of Common as could or might be claimed by him in respect of the said Manor, or otherwise, upon the Premises so intended to be divided and inclosed, and subject to the Agreement herein before contained, with respect to the Copyhold Fines hereafter to be paid for the same Premises as aforesaid) :

And whereas the executing and effecting the said Agreement would be for the mutual Benefit of all Persons interested in the said Common or Waste Ground, and be of publick Utility ; Yet the same cannot be established and rendered effectual, to answer the Intention of the Parties, without the Aid and Authority of an Act of Parliament ;

May it therefore please your MAJESTY,

That it may be Enacted ; And be it Enacted, by the KING's most Excellent MAJESTY, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Articles of Agreement, herein before recited and set forth, and the several Covenants, Agreements, Clauses, Matters, and Things therein contained, shall be, and the same are hereby ratified, established, and confirmed, according to the Tenor and true Meaning thereof, as fully and effectually, to all Intents and Purposes, as if the same had been hereby expressed and enacted.

Saving always to the KING's most Excellent MAJESTY, his Heirs and Successors, and to all and every other Person and Persons, Bodies Politick and Corporate, his, her, and their Heirs, Successors, Executors, and Administrators (Other than and except the Parties to the said Articles, and all and every other Person and Persons intitled to any Lands, Grounds, Common of Pasture, or other Common Right, in or upon the said Common or Waste Ground, so agreed and directed to be divided and inclosed as aforesaid, his, her, and their Heirs, Successors, Executors, and Administrators respectively) ; All such Estate, Right, Title, and Interest, as they, every or any of them, had and enjoyed, of, in, to, or out of, the same Common or Waste Ground, before the passing this Act, or could or ought to have had and enjoyed, in case this Act had not been made.

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Confirming Articles of Agreement for Inclosing Common or Waste Ground within the Manor or Lordship of Hellington, in the County of York.

[1761.]